CUSTOMS BULLETIN AND DECISIONS

Weekly Compilation of

Decisions, Rulings, Regulations, and Notices

Concerning Customs and Related Matters of the

U.S. Customs Service

U.S. Court of Appeals for the Federal Circuit

and

U.S. Court of International Trade

VOL. 28 **MARCH 16, 1994** **NO. 11**

This issue contains:

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NOTICE

The decisions, rulings, notices and abstracts which are published in the CUSTOMS BULLETIN are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Office of Logistics Management, Printing and Distribution Branch, Washington, D.C. 20229, of any such errors in order that corrections may be made before the bound volumes are published.

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402

U.S. Customs Service

Treasury Decisions

(T.D. 94–18)

FOREIGN CURRENCIES

DAILY RATES FOR COUNTRIES NOT ON QUARTERLY LIST FOR FEBRUARY 1994

The Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Holiday: Monday, February 21, 1994.

Greece drachma:

February 1, 1994	$0.004017
February 2, 1994	.004010
February 3, 1994	.003997
February 4, 1994	.003967
February 7, 1994	.003952
February 8, 1994	.003947
February 9, 1994	.003958
February 10, 1994	.003963
February 11, 1994	.003952
February 14, 1994	.003970
February 15, 1994	.004006
February 16, 1994	.004006
February 17, 1994	.003989
February 18, 1994	.004015
February 22, 1994	.004011
February 23, 1994	.003998
February 24, 1994	.004014
February 25, 1994	.004036
February 28, 1994	.004050

South Korea won:

February 1, 1994	$0.001232
February 2, 1994	.001233
February 3, 1994	.001233
February 4, 1994	.001233
February 7, 1994	.001235
February 8, 1994	.001232
February 9, 1994	.001232
February 10, 1994	.001232
February 11, 1994	.001232

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for February 1994 (continued):

South Korea won (continued):

February 14, 1994	$0.001228
February 15, 1994	.001226
February 16, 1994	.001229
February 17, 1994	.001228
February 18, 1994	.001229
February 22, 1994	.001231
February 23, 1994	.001231
February 24, 1994	.001232
February 25, 1994	.001233
February 28, 1994	.001233

Taiwan N.T. dollar:

February 1, 1994	$0.037829
February 2, 1994	.037829
February 3, 1994	N/A
February 4, 1994	N/A
February 7, 1994	.037882
February 8, 1994	N/A
February 9, 1994	N/A
February 10, 1994	N/A
February 11, 1994	N/A
February 14, 1994	.037868
February 15, 1994	.037938
February 16, 1994	.037890
February 17, 1994	.037882
February 18, 1994	.037865
February 22, 1994	.037779
February 23, 1994	.037675
February 24, 1994	.037743
February 25, 1994	.037736
February 26, 1994	.037675
February 28, 1994	.037761

Dated: March 2, 1994.

MICHAEL MITCHELL,
Chief,
Customs Information Exchange.

(T.D. 94–19)

FOREIGN CURRENCIES

VARIANCES FROM QUARTERLY RATES FOR FEBRUARY 1994

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, and reflect variances of 5 per centum or more from the quarterly rates published in Treasury Decision 94–7 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Holiday: Monday, February 21, 1994.

Finland markka:	
February 1, 1994	$0.181554
Japan yen:	
February 14, 1994	$0.009608
February 15, 1994	.009620
February 16, 1994	.009634
February 17, 1994	.009597
February 22, 1994	.009499
February 23, 1994	.009452
February 24, 1994	.009510
February 25, 1994	.009557
February 28, 1994	.009595
New Zealand dollar:	
February 4, 1994	$0.511000
Sweden krona:	
February 1, 1994	$0.126944
February 2, 1994	.126175
February 3, 1994	.126711
February 4, 1994	.126414
February 22, 1994	.126111
February 23, 1994	.125770

Dated: March 2, 1994.

MICHAEL MITCHELL,
Chief,
Customs Information Exchange.

NOTE: T.D. 94–7 originally published in CUSTOMS BULLETIN, Vol. 28, No. 3, on January 19, 1994, is corrected to reflect the following rate for Venezuela:

ERRATUM

(T.D. 94–7)

FOREIGN CURRENCIES

QUARTERLY RATES OF EXCHANGE:
JANUARY 1 THROUGH MARCH 31, 1994

The table below lists rates of exchange, in United States dollars for certain foreign currencies, which are based upon rates certified to the Secretary of the Treasury by the Federal Reserve of New York under provisions of 31 U.S.C. 5151, for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Country	Name of currency	U.S. dollars
Venezuela	Bolivar	$0.008953

Dated: March 1, 1994.

MICHAEL MITCHELL,
Chief,
Customs Information Exchange.

---

19 CFR Parts 4 and 123

(T.D. 93–96)

REPORTING REQUIREMENTS FOR VESSELS, VEHICLES, AND INDIVIDUALS; CORRECTION

RIN 1515–AB31

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule; correction.

SUMMARY: This document corrects certain editorial errors that appeared in a final rule document published in the Federal Register on December 21, 1993, regarding reporting requirements for vessels, vehicles, and individuals.

EFFECTIVE DATE: March 4, 1994.

FOR FURTHER INFORMATION CONTACT: Gregory R. Vilders, Attorney, Regulations Branch (202) 482–6930.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 21, 1993, Customs published a document in the Federal Register (T.D. 93–96, 58 FR 67312), that amended the Customs Regula-

tions to implement certain provisions of the Customs Enforcement Act of 1986, a part of the Anti-Drug Abuse Act of 1986, designed to strengthen Federal efforts to improve the enforcement of Federal drug laws and enhance the interdiction of illegal drug shipments. The regulatory changes pertained to the arrival, entry, and departure reporting requirements applicable to vessels, vehicles, and individuals, and informed the public regarding applicable penalty, seizure and forfeiture provisions for violation of the provisions.

The document removed considerable footnote material in Part 4 of the Customs Regulations (19 CFR Part 4). However, although the footnote material at the bottom of pages was removed, the superscript footnote-referencing designation in the regulatory text was not. This document corrects that error. This document also removes two other footnotes in Part 4—footnotes 92 and 118—that should have been removed, along with their superscript footnote-referencing designations, because the material they reference has been changed or deleted.

Further, one of the amendments in this document was to part 123, which required a revision to the then last sentence of § 123.0. Before T.D. 93–96 was published, however, another document, pertaining to the user fees Customs collects for certain services, was published on October 21, 1993 (T.D. 93–85, 58 FR 54271) that also amended part 123 by adding a new sentence at the end of § 123.0. This circumstance of another document (T.D. 93–85) adding a new last sentence to the same section being revised by T.D. 93–96, requires that the instruction in T.D. 93–96 be corrected to read that the next to the last sentence in § 123.0 be revised to read as indicated.

Correction of Publication

Accordingly, the publication on December 31, 1993 of the final regulations (T.D. 93–96), which were the subject of FR Doc 93–30908, is corrected as follows:

1. On page 67315, in the second column, the second instruction is corrected to read:

"Part 4 is amended by removing and reserving footnotes 4, 5, 7, 8, 8a, 9, 10, 11, 13, 14, 15, 16a, 16b, 19, 20, 23, 65, 72, 79, 91, 92, 95, 98, and 118; and removing the superscript footnote-referencing designations 4, 5, 7, 8, 8a, 9, 10, 11, 13, 14, 15, 16a, 16b, 19, 20, 23, 65, 72, 79, 91, 92, 95, 98, and 118 from the text."

2. On page 67317, in the second column, in § 123.0, the second instruction is corrected to read "Section 123.0 is amended by revising the next to the last sentence to read as follows:".

Dated: March 1, 1994.

Harold M. Singer,
Chief,
Regulations Branch.

[Published in the Federal Register, March 4, 1994 (59 FR 10283)]

U.S. Customs Service

General Notices

19 CFR Part 175

RECEIPT OF DOMESTIC INTERESTED PARTY PETITION CONCERNING COUNTRY OF ORIGIN MARKING FOR CAST IRON SOIL PIPE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of receipt of domestic interested party petition; solicitation of comments.

SUMMARY: Customs has received a petition filed on behalf of domestic interested parties concerning the country of origin marking requirements for cast iron soil pipes used primarily to convey waste water. Currently, Customs has permitted the importation of such pipes if they are marked to indicate their country of origin by cast-in-mold letters on the lips or edges or hubs of the pipes. The petition requests that Customs adopt a new rule under which the marking of all cast iron soil pipes would have to appear on the barrel of the pipe by paint stenciling in order to be considered conspicuous and legible and in compliance with the special marking requirements for pipes and tubes set forth at 19 U.S.C. 1304(c). Public comment is solicited regarding the application of these marking requirements to imported cast iron soil pipe.

DATES: Comments must be received on or before May 9, 1994.

ADDRESS: Comments (preferably in triplicate) may be submitted to the U.S. Customs Service, Regulations Branch, Office of Regulations and Rulings, 1301 Constitution Avenue, N.W., (Franklin Court), Washington, D.C. 20229. Comments may be viewed at the Office of Regulations and Rulings, Franklin Court, 1099 14th Street, N.W., Suite 4000, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Dinerstein, Value and Marking Branch, Office of Regulations and Rulings, U.S. Customs Service (202) 482–7010.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), and Part 175, Customs Regulations (19 CFR Part 175), a domes-

tic interested party may challenge certain decisions made by Customs regarding imported merchandise which is claimed to be similar to the class or kind of merchandise manufactured, produced, or wholesaled by the domestic interested party. This document provides notice that domestic interested parties are challenging a marking decision made by Customs.

The petitioners are The American Brass & Iron Foundry and Charlotte Pipe and Foundry Company. Both of these entities are domestic interested parties within the meaning of section 516(a)(2), Tariff Act of 1930, as amended (19 U.S.C. 1516(a)(2)).

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304) provides that, unless excepted, every article of foreign origin imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article. Congressional intent in enacting 19 U.S.C. 1304 was that the ultimate purchaser should be able to know by an inspection of the marking on the imported goods the country of which the goods is the product.

Section 207 of the Trade and Tariff Act of 1984, (Pub. L. 98–573), amended 19 U.S.C. 1304 to require, without exception, that all pipe, tube, and pipe fittings of iron or steel be marked to indicate the proper country of origin by means of die stamping, cast-in-mold lettering, etching or engraving. 19 U.S.C. 1304(c). In 1986, Congress enacted Pub. L. 99–514 which amended 19 U.S.C. 1304(c) to authorize alternative methods of marking if, because of the nature of an article, it is technically or commercially infeasible to mark by one of the four prescribed methods. The amendment, codified at 19 U.S.C. 1304(c)(2), provides that in such case, "the article may by marked by an equally permanent method of marking such as paint stenciling or in the case of small diameter pipe, tube, and fittings, by tagging the containers or bundles."

The petitioners contend that in order for the marking of the imported pipes to be considered conspicuous and legible and be in accordance with 19 U.S.C. 1304(c), they must be marked on their barrels by paint stenciling. Customs presently has no requirement for cast iron soil pipe to be marked in any particular location or that any method other than those specified in 19 U.S.C. 1304(c) be used to mark the pipe. Customs has allowed cast iron pipe to be marked on its side or lip with cast-in-mold letters. Counsel for the petitioners maintains that such marking is not conspicuous or legible and therefore is not in compliance with the requirements of the 19 U.S.C. 1304. It is alleged that the ultimate purchasers of the soil pipe, general contractors or plumbing subcontractors, are usually unable to determine the country of origin of the pipe because the marking is not conspicuous or legible. Petitioners have furnished several letters and statements from plumbing contractors attesting that it is important for then to know the country of origin of the soil pipe they install, but often they are unable to tell its country of origin.

Counsel for the petitioners contends that it is not technically and commercially feasible to conspicuously and legibly mark cast iron soil pipes by any of the four methods mentioned in 19 U.S.C. 1304(c)(1). Accordingly, petitioners argue that Customs should apply 19 U.S.C. 1304(c)(2) and require that cast iron soil pipes be marked by paint stenciling.

Previously, the petitioners requested a ruling on whether a sample soil pipe was legally marked. The marking was on the side or lip or hub of the pipe in cast-in-mold letters. Customs concluded that the marking was sufficiently conspicuous and legible to satisfy the requirements of 19 U.S.C. 1304 and that marking duties should not be assessed against entries of this merchandise. (Headquarters Letter 734818, March 31, 1993.) Petitioners believe that this determination is incorrect and challenge it. They claim that because the country of origin marking is at the end of the pipe, it is hard to find and in a location where users of the pipes do not expect to find such information. It is further represented that it is the American pipe industry's practice to put the important information about pipes on their barrels. The petitioners also point out that the markings are difficult to read because of the small surface area at the end of the pipes, the minimal thickness of the raised lettering, lack of color contrast, and because often a tar coating covers the lettering. The petition also states that the pipes are often stored in large stacks and that the ultimate purchaser would have to lift the end of each pipe to examine the marking, but this is usually not feasible because the pipes are heavy and delivered in large quantities.

We invite comments from the public as to whether marking on imported cast iron soil pipes by cast-in-mold letters on the side of pipe is sufficiently conspicuous and legible to satisfy the requirements of 19 U.S.C. 1304. We also seek comments as to whether the pipes can be conspicuously and legibly marked through one of the four methods mentioned in 19 U.S.C. 1304(c)(1), or if paint stenciling on the barrel of the pipe must be used to achieve a conspicuous and legible marking.

COMMENTS

Pursuant to section 175.1(a), Customs Regulations (19 CFR 175.21 (a)), before making a determination on this matter, Customs invites written comments from interested parties. The petition of the domestic interested party, as well as all comments received in response to this notice, will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), section 1.4, Treasury Department Regulations (31 CFR 1.4) and section 103.11(b), Customs Regulations (19 CFR 103.11(b)) on regular business days between the hours of 9:00 a.m. and 4:00 p.m. at Regulations Branch, Suite 4000, Franklin Court, 1099 14th Street, N.W., Washington, D.C. 20229. Appointments to inspect the petition and comments can be made by contacting the Regulations Branch at 202–482–6970.

AUTHORITY

This notice is published in accordance with section 175.21(a), Customs Regulations (19 CFR 175.21(a)).

DRAFTING INFORMATION

The principle drafter of this document was Mr. Robert Dinerstein, Value and Marking Branch, U.S. Customs Service Personnel from other Customs offices participated in its development.

GEORGE J. WEISE,
Commissioner of Customs.

Approved: February 11, 1994.

JOHN P. SIMPSON,
Deputy Assistant Secretary,
(Regulatory, Tariff and Trade Enforcement).

[Published in the Federal Register, March 8, 1994 (59 FR 10764)]

COPYRIGHT, TRADEMARK, AND TRADE NAME RECORDATIONS

(No. 3–1994)

AGENCY: U.S. Customs Service, Department of the Treasury.

SUMMARY: The copyright, trademarks, and trade names recorded with the U.S. Customs Service during the month of January 1994 follow. The last notice was published in the CUSTOMS BULLETIN on January 5, 1994.

Corrections or information to update files may be sent to U.S. Customs Service, IPR Branch, 1031 Constitution Avenue, N.W., (Franklin Court), Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: John F. Atwood, Chief, Intellectual Property Rights Branch, (202) 482–6960.

Dated: February 28, 1994.

JOHN F. ATWOOD,
Chief,
Intellectual Property Rights Branch.

The lists of recordations follow:

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TNM OR MSK	OWNER NAME	RES
COP9400001	19940114	20140114	563-10B	WIMPOLE STREET	N
COP9400002	19940114	20140114	563-10G	WIMPOLE STREET	N
COP9400003	19940114	20140114	LACE ARTWORK 01B	WIMPOLE STREET	N
COP9400004	19940114	20140114	LACE ARTWORK 06B	WIMPOLE STREET	N
COP9400005	19940114	20140114	LACE ARTWORK 02B	WIMPOLE STREET	N
COP9400006	19940114	20140114	LACE ARTWORK 04B	WIMPOLE STREET	N
COP9400007	19940114	20140114	LACE ARTWORK 03B	WIMPOLE STREET	N
COP9400008	19940114	20140114	LACE ARTWORK 05C	WIMPOLE STREET	N
COP9400009	19940114	20140114	LACE ARTWORK 05B	WIMPOLE STREET	N
COP9400010	19940114	20140114	LACE ARTWORK 06C	WIMPOLE STREET	N
COP9400011	19940114	20140114	LENOX SPICE VILLAGE - FLOOR CANISTER	LENOX INC.	N
COP9400012	19940114	20140114	LENOX SPICE VILLAGE - TEA CANISTER	LENOX INC.	N
COP9400013	19940114	20140114	LENOX SPICE VILLAGE CANISTER-COFFEE	LENOX INC.	N
COP9400014	19940114	20140114	SPICE VILLAGE-SUGAR CANISTER	LENOX INC.	N
COP9400015	19940121	20140121	DESIGN OF HIBISCUS OF HAWAII	BOB CUONG HOANG TRAN	N
COP9400016	19940121	20140121	DESIGN OF HAWAIIAN PARADISE	BOB CUONG HOANG TRAN	N
COP9400017	19940121	20140121	DESIGN OF SUNSET DOLPHIN	BOB CUONG HOANG TRAN	N
COP9400018	19940121	20140121	DESIGN OF HAWAIIAN FLOWERS	BOB CUONG HOANG TRAN	N
COP9400019	19940121	20140121	DESIGN OF GECKO	BOB CUONG HOANG TRAN	N
COP9400020	19940121	20140121	SUNSET DESIGN	BOB CUONG HOANG TRAN	N
COP9400021	19940121	20140121	A MOONLIGHT SCENE IN WAIKIKI	BOB CUONG HOANG TRAN	N
COP9400022	19940121	20140121	DESIGN OF SUNSET WITH PALM TREE	BOB CUONG HOANG TRAN	N
COP9400023	19940121	20140121	DIZZY DOODLER PACKAGING CARD NO. 7010	ENGHAN LTD.	N
COP9400024	19940121	20140121	DESIGN OF HAWAIIAN DOLPHIN	BOB CUONG HOANG TRAN	N
COP9400025	19940121	20140121	DIZZY DOODLER	ENGHAN LTD.	N
COP9400026	19940121	20140121	DESIGN OF HAWAII HIBISCUS	BOB CUONG HOANG TRAN	N
COP9400027	19940125	20140125	YOSHI'S COOKIE (NES)	NINTENDO OF AMERICA INC.	N
COP9400028	19940125	20140125	KIRBY'S ADVENTURE (NES)	NINTENDO OF AMERICA INC.	N
COP9400029	19940125	20140125	YOSHI'S COOKIE (GAME BOY VERSION)	NINTENDO OF AMERICA INC.	N
COP9400030	19940125	20140125	YOSHI'S SAFARI (SNES)	NINTENDO OF AMERICA INC.	N
COP9400031	19940125	20140125	POTPOURRI- HEART OF LACE (758)	MARY L. METZKE	N
COP9400032	19940128	20140128	BARN BATTERY CLOCK DESIGN	BURWOOD PRODUCTS COMPANY	N
COP9400033	19940128	20140128	RURAL MAILBOX CLOCK DESIGN	BURWOOD PRODUCTS COMPANY	N
COP9400034	19940128	20140128	RURAL MAILBOX CLOCK DESIGN	BURWOOD PRODUCTS COMPANY	N
SUBTOTAL RECORDATION TYPE			34		
TMK9400004	19940107	20030430	THEY FEEL GOOD	KEDS CORPORATION	N
TMK9400005	19940107	20030727	BLUE LABEL	KEDS CORPORATION	N
TMK9400006	19940107	20011013	SHIELD DESIGN	SPENCER'S INC.	N
TMK9400007	19940107	20010917	SPENCER'S	SPENCER'S INC.	N
TMK9400008	19940107	20050416	ENESCO	ENESCO CORPORATION	N
TMK9400009	19940107	20050514	ENESCO	ENESCO CORPORATION	N
TMK9400010	19940107	20050521	ENESCO	ENESCO CORPORATION	N
TMK9400011	19940110	20031130	BARNEY CONFIGURATION OF A PLUSH TOY	LYONS PARTNERHSIP, L.P.	Y
TMK9400012	19940110	20020803	SOFTWARE TOOLWORKS	THE SOFTWARE TOOLWORKS, INC.	N
TMK9400013	19940114	20000925	MULTI-CLAMP	HYDRO-CRAFT, INC.	N
TMK9400014	19940114	20020813	DESIGN OF THREE VINES	PEDRO DOMECQ	N
TMK9400015	19940119	20001002	EMPORIO ARMANI & DESIGN	G. A. MODEFINE, S.A.	N

02/09/94
07:58:57

U.S. CUSTOMS SERVICE
IPR RECORDATIONS ADDED IN JANUARY 1994

PAGE 2
DETAIL

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TNM OR MSK	OWNER NAME	RES
TMK9400016	19940119	20020414	GIO DE GIORGIO ARMANI & DESIGN	G. A. MODEFINE, S.A.	N
TMK9400017	19940119	20030306	CHRISTIAN DIOR	CHRISTIAN DIOR, S.A.	N
TMK9400018	19940119	20030306	DIOR	CHRISTIAN DIOR, S.A.	N
TMK9400019	19940119	20010423	CROSS & SHIELD DESIGN	SWISS ARMY BRANDS, LTD.,	Y
TMK9400020	19940119	20070107	KERLIX	KENDALL COMPANY	N
TMK9400021	19940119	20031106	FRESHEN-UP	WARNER-LAMBERT COMPANY	N
TMK9400022	19940121	20060107	DELSEY & DESIGN	STE DELSEY	N
TMK9400023	19940121	19990315	SANTANA	GREB INTERNATIONAL	N
TMK9400024	19940121	20080809	ROBERT TERRY	KELLWOOD COMPANY	N
TMK9400025	19940121	20031206	DAVID BROOKS LTD.	KELLWOOD COMPANY	N
TMK9400026	19940124	20051112	CIGNAL	MERRY-GO-ROUND ENTERPRISES	Y
TMK9400027	19940124	20020818	STUDIO SERIE	MERRY-GO-ROUND ENTERPRISES	Y
TMK9400028	19940124	20010521	I.O.U.	MERRY-GO-ROUND ENTERPRISES	Y
TMK9400029	19940124	20011201	DENIMES	MERRY-GO-ROUND ENTERPRISES	Y
TMK9400030	19940124	20020907	FLORENZI	MERRY-GO-ROUND ENTERPRISES	Y
TMK9400031	19940125	20060408	TAKE-15	JACQUELINE MOTTLEY	N
TMK9400032	19940128	20051130	HARBOR MASTER	MISTY HARBOR PROPERTIES	N
TMK9400033	19940128	20050629	MISTY HARBOR	MISTY HARBOR PROPERTIES	N
TMK9400034	19940128	19950729	ANNE KLEIN	ANNE KLEIN & CO.	N
TMK9400035	19940128	20000529	ANNE KLEIN II	ANNE KLEIN & CO.	N

SUBTOTAL RECORDATION TYPE 32

TOTAL RECORDATIONS ADDED THIS MONTH 66

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., March 2, 1994.

The following documents of the United States Customs Service, Office of Commercial Operations, Office of Regulations and Rulings, has been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

HARVEY B. FOX,
Director,
Office of Regulations and Rulings.

PROPOSED REVOCATION OF CUSTOMS RULING LETTER RELATING TO TARIFF CLASSIFICATION OF POLYPROPYLENE BAG

ACTION: Notice of proposed revocation of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1) of Title VI (Customs Modernization Act) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling pertaining to the tariff classification of a polypropylene bag.

DATE: Comments must be received on or before April 15, 1994.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1301 Constitution Avenue, NW., (Franklin Court), Washington, D.C. 20229. Comments submitted may be inspected at the Commercial Rulings Division, Office of Regulations and Rulings, located at Franklin Court, 1099 14th Street, NW., Suite 4000, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Craig Clark, Textile Classification Branch, (202) 482–7050.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1) of Title VI (Customs Modernization Act) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling pertaining to the tariff classification of a polypropylene bag.

In Headquarters Ruling Letter 950919, issued by headquarters on April 8, 1992, a polypropylene bag was classified in heading 6305 of

the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for sacks and bags, of a kind used for the packing of goods (see ruling letter at "Attachment A" to this document).

Counsel for the importer requested that we reconsider Headquarters Ruling Letter 950919 and classify the polypropylene bag in heading 4602, which provides for basketwork, wickerwork and other articles, made directly to shape from plaiting materials or made up from articles of Heading 4601.

After further analysis of Headquarters Ruling Letter 950919, we believe that the classification of the polypropylene bag was erroneous. In that ruling we classified the bag on the basis of General Rule of Interpretation (GRI) 1. In fact, the bag is made of strips of two headings: 4602 and 6305. In application of GRI 3(b), the strips of Heading 4602, in our opinion, provide the essential character to the bag, making the bag classifiable under subheading 4602.90.0000, HTSUSA, which provides for basketwork, wickerwork and other articles, made directly to shape from plaiting materials or made up from articles of Heading 4601, other.

Customs intends to revoke Headquarters Ruling Letter 950919 to reflect proper classification of the product in subheading 4602.90.0000, HTSUSA. Before taking this action, consideration will be given to any written comments timely received. The proposed ruling revoking the prior headquarters ruling is set forth in "Attachment B" to this document.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: February 25, 1994.

JOHN DURANT,
Director,
Commercial Rulings Division.

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, D.C., April 8, 1992.

CLA–2 CO:R:C:T 950919 CRS
Category: Classification
Tariff No. 6305.31.0020

HARRY G. KELLY, ESQ.
GIVENS AND KELLY
950 Echo Lane
Suite 360
Houston, TX 77024–2788

Re: Woven polypropylene bag; plastic strip; heading 5404; EN 54.04; apparent width; average width; EN 46.02; Note 1(g), Note 1(h), Section XI.

DEAR MR. KELLY:

This is in reply to your letter of December 4, 1991, to our New York office, on behalf of Mitsui Plastics, Inc., concerning the tariff classification of a woven polypropylene bag under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). A sample of the bag was submitted for our examination.

Facts:

The article in question is a sack or bag manufactured in the Republic of Korea. The bag is made from woven polypropylene strip fabric that is coated on one side with plastics. The individual warp and weft strips from which the bag is woven are 5.6 mm wide; however, the weft strips are compressed due to crumbling and folding in the weaving process with the result that approximately 70 percent of the weft strips appear to measure less than 5 mm in width. The actual width of the warp and weft strips nevertheless remains 5.6 mm at all times. The finished bag is 33 inches long, 15½ inches wide, is open at one end. A cotton filler cord is used to sew the bottom closure. The bag is used to transport grain, plastic granules and similar products.

Issue:

The issue presented is whether the warp and weft strips that comprise the instant bag have an apparent width greater than 5 mm such that the bag is classifiable under a provision for articles of plaiting material, or whether it is instead classifiable under a provision for sacks and bags of a kind used for the packing of goods.

Law and Analysis:

Two headings are potentially relevant for the purposes of this ruling: heading 4602, HTSUSA, which provides, *inter alia*, for articles made directly to shape from plaiting materials or made up from articles of heading 4601; and heading 6305, HTSUSA, which covers sacks and bags (made from textile materials) of a kind used for the packing of goods.

It is your contention that the instant bag is excluded from classification as a textile (Section XI), pursuant to Note 1(g), Section XI, on the grounds that it is "made preponderantly (over 75%) of nontextile plastics materials. Moreover, since the bag is coated on one side with plastics, you have argued that Note 1(h), Section XI, also operates to preclude classification as an article of textiles. On this basis you contend that the instant bag should be classified as an article of plaiting materials of heading 4602. We disagree.

As used in Chapter 46, the expression "plaiting materials" includes plastic strip, but not strip of Chapter 54 (man-made filaments). Note 1, Chapter 46, HTSUSA. The official interpretation of the harmonized System at the international level is embodied in the *Explanatory Notes*. While not legally binding, General Explanatory Note, Chapter 46, states that the Chapter includes articles made from:

> (3) [S]trip and the like of plastics of Chapter 39 (but not * * * strip or the like of an apparent width not exceeding 5 mm, of man-made textile materials, of Chapter 54). (Emphasis in original).

Thus in order for an article of strip to be classified in heading 4602, it must be made from strip of Chapter 39, i.e., strip that exceeds 5 mm in width. Subnote (ii) to General Explanatory Note also provides that articles made from strip with an apparent width not exceeding 5 mm are excluded from Chapter 46.

The bag in question is made from plastic strip that exceeds 5 mm in the warp, but measures less than 5 mm in the weft due to the twisting and folding that occurs during the weaving process. However, if the actual or apparent width of strip is not uniform, classification is determined with regard to average width. (EN) 54.04(2)(ii), 754. Based on a Customs Headquarters laboratory report, the average width of the weft strips in 4.1 mm. The warp strips are 5.6 mm wide. Weighting the warp and the weft strips by the number of single strips per five centimeters (since the former are more numerous), yields an average overall width of the strips comprising the bag of 4.9 mm. On this basis, the bag is not classifiable as an article of plaiting materials, since the strip from which the bag is made is itself not classifiable as plastics material of Chapter 39.

Section XI, HTSUSA, covers textiles and textile articles. You contend that the instant bag is excluded from Section XI by Note 1(g), Section XI. Note 1(g) excludes strip with an apparent width greater than 5 mm from the textile provisions of the tariff. Strip not exceeding 5 mm is classifiable in Section XI, specifically in heading 5404, HTSUSA, which provides, *inter alia*, for strip and the like of synthetic textile materials. Since the bag is

made from strip with an average width of less than 5 mm, Note 1(g) does not exclude it from Section XI.

Similarly, Note 1(h), which you contend excludes the instant merchandise from Section XI, excludes only coated fabrics of Chapter 39 from Section XI. Such fabrics must be coated on both sides with a plastics coating that is visible to the naked eye. The fabric used to make the article in question is coated on only one side with a plastic coating that cannot be seen by the naked eye. Consequently, it is not excluded from Section XI by virtue of Note 1(h).

Accordingly, since the bag is not excluded from Section XI and since the average width is less than 5 mm, the sample bag is a textile article classifiable in heading 6305, HTSUSA.

Holding:

The bag at issue is classifiable in subheading 6305.31.0020, HTSUSA, under the provision for sacks and bags, of a kind used for the packing of goods: of man-made textile materials: of polyethylene or polypropylene strip or the like: other. It is dutiable at the rate of 9.5 percent ad valorem and is subject to textile category 669.

The designated textile category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Part categories are the result of international bilateral agreements which are subject to frequent renegotiation and changes. In order to obtain the most current information available on part categories, we suggest that you check, close to the time of shipment, the *Status Report on Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, D.C.

CLA–2 CO:R:C:T 952573 CC
Category: Classification
Tariff No. 4602.90.0000

HARRY G. KELLY, ESQ.
GIVENS AND KELLY
950 Echo Lane
Suite 360
Houston, TX 77024–2788

Re: Reconsideration and Revocation of HRL 950919; classification of a woven polypropylene bag.

DEAR MR. KELLY:

This letter is in response to your request, on behalf of Mitsui Plastics, Inc., for reconsideration of Headquarters Ruling Letter (HRL) 950919, which concerned the classification of a woven polypropylene bag. A sample was available for examination.

Facts:

In HRL 950919, dated April 8, 1992, we ruled that the subject merchandise is classified in Heading 6305 of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for sacks and bags, of a kind used for the packing of goods. We have reviewed that ruling and have found it to be in error. The correct classification follows.

You contend that the correct classification for this merchandise is in Heading 4602, HTSUSA, which provides for basketwork, wickerwork and other articles, made directly to shape from plaiting materials or made up from articles of Heading 4601. The article in question is a sack or bag manufactured in the Republic of Korea. The bag is made from woven polypropylene strip fabric that is coated on one side with plastics. The individual warp and weft strips from which the bag is woven are 5.6 mm wide; however, the weft strips are compressed due to crumbling and folding in the weaving process with the result that approximately 70 percent of the weft strips appear to measure less than 5 mm in width. The actual width of the warp and weft strips nevertheless remains 5.6 mm at all times. The finished bag is 33 inches long, 15½ inches wide, and is open at one end. A cotton filler cord is used to sew the bottom closure. The bag is used to transport grain, plastic granules and similar products.

According to your submissions, the weight of the components of the bag is the following:

Warp strip, over 5 mm	36.50 gm
Weft strip, over 5 mm	10.96 gm
Weft strip, not over 5 mm	25.55 gm
Polypropylene coating	37.00 gm
Polypropylene adhesive	3.00 gm
Bottom sewing thread	0.70 gm
Cotton filler cord	0.66 gm
Total	114.36 gm

Issue:

Whether the merchandise at issue is classifiable in Heading 3923, HTSUSA, Heading 4602, HTSUSA, or Heading 6305, HTSUSA?

Law and Analysis:

Classification of merchandise under the HTSUSA is in accordance with the General Rules of Interpretation (GRI's), taken in order. GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes.

There are three relevant headings for classification of the merchandise at issue: Heading 4602, Heading 6305, and Heading 3923, HTSUSA.

Note 2(ij) to Chapter 39, HTSUSA, specifically precludes plaits, wickerwork or other articles of Chapter 46 from coverage by Chapter 39. Therefore if the merchandise at issue is considered made of plaits, it is excluded from classification as an article of plastics of Chapter 39. Note 1(h) to Section XI, HTSUSA states that Section XI does not cover woven, knitted or crocheted fabrics, felt or nonwovens, impregnated, coated, covered or laminated with plastics, or articles thereof, of chapter 39. In HRL 950919 we stated the following concerning whether the merchandise at issue is classifiable as an article of plastics:

> Such fabrics must be coated on both sides with a plastics coating that is visible to the naked eye. The fabric used to make the article in question is coated on only one side with a plastic coating that cannot be seen by the naked eye. Consequently, it is not excluded from Section XI, by virtue of Note 1(h).

If considered made of textile material, therefore, this merchandise is not excluded from Section XI by the plastics application. Consequently the merchandise at issue is not classifiable in Chapter 39.

Note 1(g) to Section XI, provides that Section XI does not cover the following:

> Monofilament of which any cross-sectional dimension exceeds 1 mm or strip or the like (for example, artificial straw) of an apparent width exceeding 5 mm, of plastics (chapter 39), or plaits or fabrics or other basketware or wickerwork of such monofilament or strip (chapter 46).

Note 1 to Chapter 46, HTSUSA, provides the following:

> In this chapter the expression *"plaiting materials"* means materials in a state or form suitable for plaiting, interlacing or similar processes; it includes * * * monofilament and strip and the like of plastics * * * but not * * * monofilament and strip and the like of chapter 54.

Subnote (ii) to Chapter 46 of the *Harmonized Commodity Description and Coding System, Explanatory Notes,* the official interpretation of the nomenclature at the internation-

al level, at page 651, states that the following is not considered plaiting materials of Chapter 46:

> Monofilament of which no cross-sectional dimension exceeds 1 mm, or strip or flattened tubes (including strip and flattened tubes folded along the length), whether or not compressed or twisted (artificial straw and the like), of man-made textile materials, provided that the apparent width (i.e., in the folded, flattened, compressed or twisted state) does not exceed 5 mm (Section XI).

Thus in order for the merchandise at issue to be classifiable in Heading 4602, it must be made of strip exceeding 5 millimeters in width. If it is made of strip under 5 millimeters in width, it is classifiable in Section XI.

In HRL 950919 we ruled that the bags at issue were classified in Heading 6305. We stated that due to the twisting and folding of the strips in the weft, EN 5404(2)(iii) at page 754 was applicable, which states that if the actual or apparent width of strip is not uniform, classification is determined with regard to average width. Based on this Explanatory Note and a Customs laboratory report, we found that the average width of the weft strips was 4.1 millimeters. We ruled that "weighting the warp and the weft strips by the number of single strips per five centimeters (since the former are more numerous), yields an average overall width of the strips comprising the bag of 4.9 mm." Therefore we concluded that the bag was classifiable as an article of textile.

Although EN 5404(2)(iii) applies to the individual strips of this bag, this note is not applicable for purposes of determining an average overall width for the entire bag. The bag at issue is made of strips of two different widths for classification purposes. The strips of the warp, along with 30 percent of the strips of the weft, are greater than 5 millimeters in width, making the bag, *prima facie*, classifiable as plaiting in Heading 4602. 70 percent of the strips of the weft are less than 5 millimeters in width, making the bag, *prima facie*, classifiable as an article of textile in Section XI in heading 6305, which provides for sacks and bags, of a kind used for the packing of goods. Consequently, classification cannot be effected by GRI 1, and the other GRI's must be applied.

GRI 3 provides for the classification of goods when, by application of GRI 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings. GRI 3(b) provides that mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale shall be classified as if they consisted of the material or component which gives them their essential character.

According to the *Explanatory Notes*, at page 4, the factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

For the merchandise at issue, the weight of the plaiting material far exceeds that of the textile material. In addition, the plaiting material covers much more of the surface area than the textile material does. Consequently, we find that the essential character of the bag is imparted by the plaiting strips in application of GRI 3(b). The bag, therefore, is classified in Heading 4602, HTSUSA.

Holding:

The merchandise at issue is classified under subheading 4602.90.0000, HTSUSA, which provides for basketwork, wickerwork and other articles, made directly to shape from plaiting materials or made up from articles of Heading 4601, other. The rate of duty is 5.3 percent ad valorem.

Accordingly, HRL 950919, dated April 8, 1992, is hereby revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

U.S. Customs Service

Proposed Rulemaking

19 CFR Part 146

PETROLEUM REFINERIES IN FOREIGN TRADE SUBZONES

RIN 1515–AB20

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document invites public comment on a proposed revision of the notice of proposed rulemaking published in the Federal Register on August 10, 1992 (57 FR 35530), which would add special procedures and requirements to the Customs Regulations governing the operations of crude petroleum refineries approved as foreign trade subzones. The proposed rule is necessary to implement a section of the Technical and Miscellaneous Revenue Act of 1988 which amended the Foreign Trade Zone Act to make specific provision for petroleum refinery subzones. Customs has significantly revised the initial notice of proposed rulemaking as a result of the extensive and varied input received from the oil refinery and foreign trade zone communities, as well as from other interested parties, in response to the initial notice.

DATE: Comments must be received on or before May 3, 1994.

ADDRESS: Comments (preferably in triplicate) must be submitted to U.S. Customs Service, ATTN: Regulations Branch, Franklin Court, 1301 Constitution Avenue, NW., Washington, D.C. 20229, and may be inspected at the Regulations Branch, 1099 14th Street, NW., Suite 4000, Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Legal aspects: Cari Berdut, Entry Rulings Branch, (202–482–7040).

Operational aspects: Louis Hryniw, Office of Regulatory Audit, (202–927–1100).

SUPPLEMENTARY INFORMATION:

BACKGROUND

On August 10, 1992 (57 FR 35530), Customs published a document in the Federal Register, proposing to amend the Customs Regulations to add special procedures and requirements governing the operations of crude petroleum refineries approved as foreign trade subzones, in im-

plementation of § 9002 of the Technical and Miscellaneous Revenue Act of 1988, which amended the Foreign Trade Zones Act, 19 U.S.C. 81c(d), to make specific provision for petroleum refinery subzones.

Briefly, as stated in the August 10, 1992, notice of proposed rulemaking, the amendment obviates the need to determine exactly when and where in the manufacturing process crude and other feedstocks become other products. In so doing, it permits refiners as well as Customs to assess the relative value of such multiple products at the end of the manufacturing period from which such products were produced, when the actual quantities of these products resulting from the refining process can be measured with certainty. Also, the amendment permits the products refined in a subzone during a manufacturing period to be attributed to given crude or other feedstocks introduced into production during the period, to the extent that such products were producible (could have been produced) therefrom in the quantities removed from the subzone.

By a document published in the Federal Register on September 14, 1992 (57 FR 41896), Customs extended the public comment period for the proposed rule until December 8, 1992. Subsequently, by a document published in the Federal Register on November 24, 1992 (57 FR 55198), Customs further extended the public comment period until February 8, 1993, and gave notice of a public meeting which was held on December 15 and 16, 1992, concerning the proposed amendments.

As a result of the extensive and varied input received from the oil refinery and foreign trade zone communities, as well as from other interested parties, in response to the initial notice of proposed rulemaking and the public meeting, Customs has decided to significantly revise its initial notice, and is requesting additional public comment on the revised proposed rule.

The following discussion includes a summary of the various comments received in response to the August 10, 1992, notice of proposed rulemaking, together with an explanation and analysis regarding the sections proposed to be added, eliminated or further revised. The proposed rule as revised is thereafter set forth.

Discussion of Comments

Comment:

Most commenters favor deletion of proposed § 146.92(a), involving the definition of "Assay".

Response:

Customs agrees. Laboratory analyses are sufficient to verify feedstock characteristics and provide API gravity.

Comment:

Most commenters indicated that the cumulative entry activity report defined in proposed § 146.92(c) is only required in the Houston District and, therefore, favor its deletion because the information is already contained in the subzone activity report.

Response:

Upon further consideration, Customs has determined to delete proposed § 146.92(c), (d), (h) and (1), involving the report in question, as well as certain related reports, specifically, the duty and user fee report, the inventory disposition report, and the product shipment report, all of which were principally addressed in proposed § 146.96 which, as a result, is also deleted from the proposed rule.

Comment:

Commenters indicated that the definition in proposed § 146.92(e) concerning "feedstock" should be expanded to include natural gas and other hydrocarbons to comply with EPA regulations.

Response:

Customs agrees and has so modified the wording of proposed § 146.92(e) (now redesignated as § 146.92(b)).

Comment:

Many commenters noted that proposed § 146.92(f) defining "final product" should also include products consumed in the zone.

Response:

Customs agrees with this suggestion and has so changed proposed § 146.92(f) (now redesignated as § 146.92(d)).

Comment:

Most commenters indicated that fungibility is already defined in § 146.1(b), and that a definition for this term is not needed in the proposed subpart if the assay requirement is deleted.

Response:

Customs agrees. Proposed § 146.92(g) has been eliminated.

Comment:

A majority of commenters propose that the "manufacturing period" coincide with the normal accounting cycle.

Response:

After reviewing the comments, particularly those of the Congressional sponsors of the legislation, Customs is convinced that a literal interpretation of the statutory language would not be appropriate. Therefore, proposed § 146.92(i) (now redesignated as § 146.92(e)) dealing with this matter has been reworded. The definition allows an operator to make the attribution of a final product either during the period in which the final product was produced (even if not consumed or removed from the refinery subzone during that same period) or the period in which the final product was consumed or removed from the zone (even if the final product was made in a prior period). The selection of the method is at the operator's option, but once selected, the method must be used consistently.

Comment:

Most commenters suggested that they should be permitted to use standard product values, based on published prices.

Response:

Customs agrees that standard product values, based on published prices, may be utilized, but that this must be done on a consistent basis. Thus, proposed § 146.92(j) (now redesignated as § 146.92(g)), involving the price of products in the subzone, has been reworded.

Comment:

Most commenters suggested rewording proposed § 146.92(n) which defined the "relative value" of products produced in the subzone.

Response:

The definition of "relative value" proposed by the commenters has been included in proposed § 146.92(n) (now redesignated as §146.92(i)) because it states the same information as the proposed regulation, albeit more succinctly.

Comment:

Many commenters noted that, generally, the "time of separation" will coincide with the "manufacturing period".

Response:

Customs agrees that the "time of separation" coincides with the "manufacturing period". Therefore, proposed § 146.92(p) (now redesignated as §146.92(k)) defining the time of separation has been modified accordingly.

Comment:

Most commenters favor deletion of proposed § 146.92(q) which defines the term "unique identifier" (UIN) because this term is already defined in § 146.1(b)(19).

Response:

Customs agrees and, therefore, this definition has been deleted.

Comment:

Most commenters proposed eliminating proposed § 146.93(a)(1) regarding the use of the UIN (unique identifier) because this matter is already covered elsewhere in part 146.

Response:

Customs agrees that existing § 146.22 adequately addresses this matter, and, therefore, paragraphs (a), (a)(1) and (a)(2) of proposed § 146.93 have been eliminated.

Comment:

A number of commenters suggested that proposed § 146.93(b)(1) be deleted because zone admittance is already covered in subpart C of part 146.

Response:

Customs agrees. Proposed § 146.93(b)(1) has been deleted.

Comment:

Most commenters suggest deletion of the requirement that domestic feedstock be assigned a UIN, as provided in proposed § 146.93(c)(1), because existing regulations do not require that a Customs Form (CF) 214 be filed on domestic feedstocks.

Response:

Customs agrees that a CF 214 is not required, and, therefore, proposed § 146.93(c)(1) has been deleted. Nevertheless, it must be noted that a domestic feedstock must be assigned a UIN under existing regulations.

Comment:

A few commenters suggested that references to T.D. 66–16 concerning the attribution of final product to given feedstock be eliminated from proposed § 146.93(d)(1) because this is already discussed elsewhere in the proposed regulations.

Response:

Customs agrees and, therefore, the proposed language has been duly modified and the section redesignated as proposed § 146.93(a)(1). Also, proposed § 146.93(d)(2) (now redesignated as § 146.93(a)(3)) dealing with attribution using alternative inventory control has been revised to make reference to the use of FIFO; the use of FIFO is illustrated in an Appendix which has been added to the revision of proposed subpart H. In addition, proposed § 146.93(d)(3) dealing with "stock in process" has been deleted, in concert with the deletion of this term from the definition section;in its place, a new proposed § 146.93(a)(2) makes reference to the use of actual production records in attributing product to feedstock.

Comment:

Commenters suggested that products consumed within the zone should be included in proposed § 146.93(e).

Response:

This suggestion has been incorporated in proposed § 146.93(e) (now redesignated as § 146.93(b)).

Comment:

Commenters objected to the language of proposed § 146.94(a) regarding the introduction of feedstock into the refining process because they believe it requires a direct identification system.

Response:

The commenters have misread this section, the purpose of which is to establish the amount and identity of the feedstocks available for attribu-

tion during each manufacturing period. The proposed language has been modified to eliminate any such misunderstanding.

Comment:

Most commenters suggested deletion of the sentence, "This date establishes the end of the manufacturing period.", in proposed § 146.94(b).

Response:

Given the proposed definition of "manufacturing period" this suggested change has been adopted.

Comment:

Commenters indicated that the language contained in proposed § 146.94(c) regarding the removal of product from a refinery subzone is specific to a calendar week. However, an accounting period may be greater than a week.

Response:

While a manufacturing or accounting period may be greater than a week, there is no authority to permit a consumption entry covering products removed from a zone to exceed one week. Thus, the language of § 146.94(c) remains in substance as originally proposed. However, Customs will reevaluate the possibility of permitting monthly entries, in light of the Customs modernization portion of the recently passed North American Free Trade Agreement Implementation Act, particularly § 637.

Currently, a refiner who desires to make attributions on the basis of a monthly manufacturing or accounting period must attribute and make any required relative value calculation by attributing current removals or consumptions to final products that were produced in a prior manufacturing or accounting period. A refiner who reports removals and consumption on a weekly basis and who elects to attribute a final product that is removed or consumed, in the same week that it is produced, must make the appropriate attribution and relative value calculation for that week.

Comment:

Commenters noted that attribution is more appropriately dealt with in proposed § 146.99 (now redesignated as proposed § 146.96), rather than in proposed § 146.95 titled "Feedstock inventories".

Response:

Customs agrees with the comments that attribution can be dealt with more appropriately in proposed § 146.99 (now redesignated as § 146.96); therefore, proposed § 146.95 concerning feedstock inventories has been deleted. Proposed § 146.97 titled "producibility" is now renumbered as § 146.95.

Comment:

Commenters suggested deleting the last sentence and four reports listed in proposed § 146.96 concerning a subzone activity report.

Response:

As already stated above, this proposed section has been deleted in its entirety.

Comment:

Commenters noted that proposed § 146.97(a) must provide for products consumed within the subzone.

Response:

Customs agrees with the comments that proposed § 146.97(a) must provide for consumption within the zone. Therefore, appropriate language has been included in proposed § 146.97(a) (now redesignated as § 146.95(a)).

Comment:

Comments indicated that, as currently worded, proposed § 146.98(a) is limited to operators using producibility.

Response:

Proposed § 146.98(a) (now redesignated as § 146.93(c)) has been modified to avoid any misunderstanding in this respect.

Comment:

Commenters stated that attributions are binding except for adjustments needed upon reconciliation.

Response:

Proposed § 146.99(a) (now redesignated as § 146.96(a)) has been modified to address this concern. Reconciliation is limited to changes in amounts, and mathematical and clerical errors, but does not include changes in the identity of the feedstock.

Comment:

Commenters noted that other inventory control methods are already covered in proposed § 146.93(d)(2), so there is no need for proposed § 146.99(c).

Response:

Customs has decided to essentially revise former proposed § 146.99(c) and to make it the subject of a new § 146.97 regarding the approval of other recordkeeping systems for subzone oil refinery operations. As already noted above, proposed § 146.93(d)(2) (now redesignated as § 146.93(a)(3)) has been revised to refer exclusively to the use of the FIFO method of inventory accounting.

Comment:

Commenters also indicated that the proposed regulations do not take into account the three relative value methods listed in proposed § 146.98(b). Commenters also pointed out that the proposed regulation does not provide a mechanism to attribute consumption within the zone.

Response:

Customs agrees and has determined to eliminate proposed § 146.98 (b) from the revised proposed rule; and proposed § 146.98(c) is now redesignated as § 146.93(e). In addition, as previously emphasized, revised §§ 146.93, 146.95 and 146.96 now provide for consumption within the subzone. Moreover, Customs has decided to add an Appendix to proposed subpart H as revised in order to give detailed examples of attribution as well as the relative value calculation.

CONCLUSION

After careful consideration of the comments received and further review of the matter, it has been determined to republish the proposal with the modifications noted and to allow interested persons an additional opportunity to submit comments on the proposal. Also, Customs has determined to add definitions in the revised proposed rule for "feedstock factor", "petroleum refinery", and "refinery operating unit", and to eliminate the definitions for "protection of the revenue" and "stock in process" formerly set forth in proposed § 146.92(m) and (o), respectively. Commenters on the original proposal need not resubmit their comments. They will be considered along with any new comments received in response to this notice.

COMMENTS

In developing the final regulations, any written comments (preferably in triplicate) that are timely submitted to Customs will be given consideration, along with the comments already submitted in response to the August 10, 1992, notice of proposed rulemaking. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), during regular business days between the hours of 9:00 a.m. and 4:30 p.m., at the Regulations Branch, 1099 14th Street, NW., Suite 4000, Washington, D.C.

REGULATORY FLEXIBILITY ACT AND EXECUTIVE ORDER 12866

For the reasons explained in the peamble to the prior notice of proposed rulemaking and to this document, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.)*, it is hereby certified that the proposed amendments set forth in this document, if adopted, will not have a significant economic impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. This proposed rule is not a "significant regulatory action" under E.O. 12866.

PAPERWORK REDUCTION ACT

The collection of information contained in this notice of proposed rulemaking is in §§ 146.93—146.97. The respondents would be businesses. The information is necessary in order to effectively supervise

and control the activities of oil refineries operating in foreign trade subzones, and to ensure compliance with the requirements of law as well as the protection of the revenue.

The collection of information contained in this notice of proposed rulemaking has already been approved by the Office of Management and Budget (OMB) under 1515–0189, in connection with the prior notice of proposed rulemaking.

Estimated total annual reporting and/or recordkeeping burden: 18,824 hours

Estimated average annual burden per respondent and/or recordkeeper: 2,353 hours

Estimated number of respondents and/or recordkeepers: 8

Estimated annual frequency of responses: 52

Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503, with copies to the U.S. Customs Service at the address previously specified.

Drafting Information

The principal author of this document was Russell Berger, Regulations Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in Part 146

Customs duties and inspection, Exports, Foreign trade zones, Imports, Reporting and recordkeeping requirements.

Proposed Amendment

For the reasons set forth in the preamble, it is proposed that part 146, Customs Regulations (19 CFR part 146) be amended as follows:

PART 146—FOREIGN TRADE ZONES

1. The general authority citation for part 146 is revised to read as follows:

Authority: 19 U.S.C. 66, 81a-u, 1202 (General Note 17, Harmonized Tariff Schedule of the United States), 1623, 1624.

* * * * * * *

2. It is proposed to amend part 146 by adding a new subpart H thereto to read as follows:

SUBPART H—PETROLEUM REFINERIES IN FOREIGN TRADE SUBZONES

Sec.

SUBPART H—PETROLEUM REFINERIES IN FOREIGN TRADE SUBZONES

§ 146.91 Applicability.

This subpart applies only to a petroleum refinery (as defined herein) engaged in refining petroleum in a foreign trade zone or subzone. This subpart also applies only to feedstocks (crude petroleum and derivatives thereof) which are introduced into production in a refinery subzone. Further, the provisions relating to zones generally, which are set forth elsewhere in this part, including documentation and document retention requirements, and entry procedures, such as weekly entry, shall apply as well to a refinery subzone, insofar as applicable to and not inconsistent with the specific provisions of this subpart.

§ 146.92 Definitions.

The following definitions are applicable to this subpart H:

(a) *Attribution.* "Attribution" means the association of a final product with its source material by application of:

(1) Actual operating records;

(2) Producibility under T.D. 66–16; or

(3) Other Customs approved method.

(b) *Feedstocks.* "Feedstocks" means crude petroleum or intermediate product that is used in a petroleum refinery to make a final product.

(c) *Feedstock factor.* "Feedstock factor" means the relative value of final products utilizing T.D. 66–16 (see § 146.92(h)), and which takes into account any loss or gain.

(d) *Final product.* "Final product" means any petroleum product that is produced in a refinery subzone and thereafter removed therefrom or consumed within the zone.

(e) *Manufacturing period.* "Manufacturing period" means a period selected by the refiner which shall not exceed a calendar month, for which attribution to a source feedstock must be made and, if required, a relative value assigned for every final product made, consumed in or removed from the refinery subzone.

(f) *Petroleum refinery.* "Petroleum refinery" means a facility that refines a feedstock listed on the top line of the tables set forth in T.D. 66–16 into a product listed in the left column of the tables set forth in T.D. 66–16.

(g) *Price of product.* "Price of product" means the average per unit market value of each final product for a given manufacturing period or the published standard product value if updated each month.

(h) *Producibility.* "Producibility" is a method of attributing products to feedstocks for petroleum manufacturing in accordance with the Industry Standards of Potential Production set forth in T.D. 66–16.

(i) *Relative value.* "Relative value" means a value assigned to each final product attributed to the separation from a privileged foreign feedstock based on the ratio of the final product's value compared to the privileged foreign feedstock's duty.

(j) *Refinery operating unit.* "Refinery operating unit" means a unit in a refinery in which feedstock is processed such as a distillation tower, cracking tower or reformer.

(k) *Time of separation.* "Time of separation" means the manufacturing period in which a privileged foreign status feedstock is deemed to have been separated into two or more final products.

§ 146.93 Inventory control and recordkeeping system.

(a) *Attribution.* (1) *Producibility.* The producibility method of attribution requires that records be kept to attribute final products to feedstocks which have been introduced into a refinery operating unit during the current or prior manufacturing period.

(2) *Actual production records.* An operator may use its actual production records as provided for under § 146.96(b) of this subpart.

(3) *Other inventory method.* An operator may use the FIFO (first-in, first-out) method of accounting (see § 191.22(c) of this chapter). The use of this method is illustrated in the Appendix to this subpart.

(4) *Feedstock not eligible for attribution.* Feedstock admitted into the refinery subzone, until it is introduced into a refinery operating unit in the subzone, is not eligible for attribution to any final product.

(b) *Consumption or removal of final product.* Each final product that is consumed in or removed from a refinery subzone must be attributed to a feedstock introduced into a refinery operating unit during the current or a prior manufacturing period. Each final product attributed as being produced from the separation of a privileged foreign status feedstock must be assigned the proper relative value as set forth in paragraph (c) of this section.

(c) *Relative value.* A relative value calculation is required when two or more final products are produced as the result of the separation of privileged foreign status feedstock. Ad valorem and compound rates of duty must be converted to specific rates of duty in order to make a relative value calculation.

(d) *Consistent use required.* The operator must use the selected method and the price of product consistently (see § 146.92(g)) of this subpart).

§ 146.94 Records concerning establishment of manufacturing period.

(a) *Feedstock charged into a refinery operating unit.* The operator must record the date and amount of each feedstock charged into a refinery operating unit during each manufacturing period.

(b) *Final product consumed in or removed from subzone.* The operator must record the date and amount of each final product consumed in, or removed from the subzone.

(c) *Consumption or removal.* The consumption or removal of a final product during a week may be considered to have occurred on the last day of that week for purposes of attribution and relative value calculation instead of the actual day on which the removal or consumption oc-

curred, unless the refiner elects to attribute using the FIFO method (see Example II to Appendix to this subpart).

(d) *Gain or loss.* A gain or loss that occurs during a manufacturing period must be taken into account in determining the attribution of a final product to a feedstock and the relative value calculation of privileged foreign feedstocks. Any gain in a final product attributed to a nonprivileged foreign status feedstock is dutiable if entered for consumption unless otherwise exempt from duty.

(e) *Determining gain or loss; acceptable methods.*

(1) *Converting volume to weight.* Volume measurements may be converted to weight measurements using American Petroleum Institute conversion factors to account for gain or loss.

(2) *Calculating feedstock factor to account for volume gain.* A feedstock factor may be calculated by dividing the value per barrel of production per product category by the quotient of the total value of production divided by all feedstock consumed. This factor would be applied to a finished product that has been attributed to a feedstock to account for volume gain.

(3) *Calculating volume difference.* Volume difference may be determined by comparing the amount of feedstocks introduced for a given period with the amount of final products produced during the period, and then assigning the volume change to each final product proportionately.

§ 146.95 Producibility.

(a) *Industry standards of potential production.* The industry standards of potential production on a practical operating basis necessary for the producibility attribution method are contained in tables published in T.D. 66–16. With these tables, a subzone operator may attribute final products consumed in, or removed from, the subzone to feedstocks during the current or a prior manufacturing period.

(b) *Attribution to product or feedstock not listed in T.D. 66–16.* For purposes of attribution, where a final product or a feedstock is not listed in T.D. 66–16, the operator must submit a proposed attribution schedule, supported by a technical memorandum, to the appropriate district director. If an operator elects to show attribution on a producibility basis, but fails to keep records on that basis, Customs shall use the operator's actual operating records to determine attribution and any necessary relative value calculation.

§ 146.96 Methods of attribution.

(a) *Producibility.* (1) *General.* A subzone operator must attribute the source of each final product. The operator is limited in this regard to feedstocks introduced into a refinery operating unit during the current or a prior period. Attribution of the final products is allowable to the extent that the quantity of such products could have been produced from such feedstocks, using the industry standards of potential production on a practical operating basis, as published in T.D. 66–16. Once attribution is made for a particular product, that attribution is binding. Subsequent

attributions of feedstock to product must take prior attributions into account. Each refiner shall keep records showing each attribution.

(2) *Attribution to privileged foreign feedstock; relative value.* If a final product is attributed to the separation of a privileged foreign feedstock, their relative values must be assigned.

Example. An operator who elects to attribute on a monthly basis files the following estimated removal of final products for the first week in September:

Jet fuel (deemed exported on international flights)	20,000
Gasoline:	
Domestic consumption	15,000
Duty-free certified as emergency war material	10,000
Petroleum coke exportations	10,000
Distillate for consumption	5,000
Petrochemicals exported	10,000
Total removals	70,000

Because it does not elect to make attributions for feedstocks that were charged to operating units during the same week, the operator attributes the estimated removals to final products made during August from the following feedstocks:

Class II PF (privileged foreign) crude	20,000
Class III PF crude	35,000
Class III D (domestic) crude	20,000
Class III NPF (nonprivileged foreign) crude	20,000
	95,000

During August the operator produced from those feedstocks:

Jet	35,000
Gasoline	40,000
Petroleum coke	10,000
Distillate	5,000
Petrochemicals	15,000
	105,000

There is a gain: 105,000–95,000 = 10,000.

Using the tables in T.D. 66–16, the following choices are available for attribution:

	Charged	Jet	Gasoline	Petroleum coke	Distillate	Petrochemical
Class II PF crude	20,000	13,000	17,200	4,400	17,200	5,000
Class III PF crude	35,000	24,500	31,850	14,000	31,150	10,150
Class III D crude	20,000	14,000	18,200	8,000	17,800	5,800
Class III NPF crude	20,000	14,000	18,200	8,000	17,800	5,800

Relative value factors are calculated:

	Barrels	Value/ Barrels	Value	Feedstock factors
Gasoline	40,000	$25	$1,000,000	.9117
Jet fuel	35,000	23	805,000	.8388
Distillate	5,000	20	100,000	.7294
Petroleum coke	10,000	10	100,000	.3647
Petrochemicals	15,000	40	600,000	1.4587
	105,000		$2,605,000	
Gain	–10,000	$2,605,000		
Total	95,000	95,000 = $27.42 average value p/bbl		

Using the feedstock factor the refiner makes the following attributions:

Jet fuel	24,192	(20,291 feedstock attributed to Class III PF Crude)
	10,808	–Class III NPF Crude (attribution of 9066 solely for purpose of accounting for the amount of NPF used)
	35,000	
Gasoline	5,000	(4,559 feedstock attributed to Class III PF Crude)
	5,000	–Class III NPF Crude (attribution of 4599 solelyfor purpose of accounting for the amount of NPF used)
	15,000	(13,676 feedstock attributed)
	25,000	
Petroleum coke	8,418	(3,070 feedstock attributed to Class II PF Crude)
	1,582	–Class III NPF Crude (attribution of 577 solely for purpose of accounting for the amount of NPF used)
	10,000	
Distillate	5,000	(3,647 feedstock attributed to Class III Domestic)
Petrochemicals	3,975	(5,800 feedstock attributed to Class III NPF Crude solely for purpose of accounting for the amount of NPF used)
	6,025	(8,789 feedstock attributed to Class III PF Crude)
	10,000	

(b) *Actual production records.* An operator may use the actual refinery production records to attribute the feedstocks used to the removed or consumed products. Customs shall accept the operator's recordation conventions to the extent that the operator demonstrates that it actually uses the conventions in its refinery operations. Whatever convention is elected by the operator, it must be used consistently in order to be acceptable to Customs.

Example. If the operator mixes three equal quantities of material in a day tank and treats that product as a three-part mixture in its production unit, Customs will accept the resulting product as composed of the three materials. If, in the alternative, the operator assumes that the three products do not mix and treats the first product as being composed of the first material put into the day tank, the second product as composed of the second material put into the day tank, and the third product as being composed of the third material put into the day tank, Customs will accept that convention also.

§ 146.97 Approval of other recordkeeping systems.

(a) *Approval.* An operator must seek approval of another recordkeeping procedure by submitting the following to the Director, Office of Regulatory Audit:

(1) An explanation of the method describing how attribution will be made when a finished product is removed from or consumed in the subzone, and how and when the feedstocks will be decremented;

(2) A mathematical example covering at least two months which shows the amounts attributed, all necessary relative value calculations, the dates of consumption and removal, and the amounts and dates that the transactions are reported to Customs.

(b) *Failure to comply.* Requests received that fail to comply with paragraph (a) of this section will be returned to the requester with the defects noted by the Director, Office of Regulatory Audit.

(c) *Determination by Director.* When the Director, Office of Regulatory Audit, determines that the recordkeeping procedures provide an acceptable basis for verifying the admissions and removals from or consumption in a refinery subzone, the Director will issue a written approval to the applicant.

APPENDIX TO SUBPART H—EXAMPLES OF ATTRIBUTION AND RELATIVE VALUE

I. *Attribution using producibility:*

Day 1.

Transfer, within the refinery subzone, from one or more storage tanks to the crude distillation unit:

50,000 pounds privileged foreign (PF) class II crude oil.

50,000 pounds PF class III crude oil.

50,000 pounds domestic status class III crude oil.

Day 20.

Removal from the refinery subzone for exportation of 50,000 pounds of aviation gasoline.

The period of manufacture for the aviation gasoline is Day 1 to Day 20. The refiner must first attribute the designated source of the aviation gasoline.

In order to maximize the duty benefit conferred by the zone operation, the refiner chooses to attribute the exported aviation gasoline to the privileged foreign status crude oil. Under the tables for potential production (T.D. 66–16), class II crude has a 30% potential, and class III has a 40% potential. The maximum aviation gasoline producible from the class II crude oil is 15,000 pounds (50,000 × .30). The maximum aviation gasoline producible from the privileged foreign status class III crude oil is 20,000 pounds (50,000 × .40). The domestic class III crude would also make 20,000 pounds of aviation gasoline.

The refiner could attribute 15,000 pounds of the privileged foreign class II crude oil, 20,000 pounds of the privileged foreign class III crude oil, and 15,000 pounds of the domestic class III crude oil as the source of the 50,000 pounds of the aviation gasoline that was exported; 35,000 pounds of class II crude oil would be available for further production for other than aviation gasoline, 30,000 pounds of privileged foreign class III crude oil would be available for further production for other than aviation gasoline, and 35,000 pounds of domestic status class III crude oil would be available for further production, of which up to 5,000 pounds could be attributed to aviation gasoline.

Day 21.

Transfer, within the refinery subzone, from one or more storage tanks to the crude oil distillation unit:

50,000 pounds PF status class I crude oil.

50,000 pounds PF status class IV crude oil.

Day 30.

Removal from the refinery subzone:

30,000 pounds of motor gasoline for consumption.

10,000 pounds of jet fuel sold to the US Air Force for use in military aircraft.

10,000 pounds of aviation gasoline sold to a U.S. commuter airline for domestic flights.

10,000 pounds of kerosene for exportation.

To the extent that the crude oils that entered production on Day 1 are attributed as the designated sources for the products removed on Day 30, the period of manufacture is Day 1 to Day 30. If the refiner chooses to attribute the crude oils that entered production on Day 21 as the designated sources of the products removed on Day 30 using the production standards published in T.D. 66–16, the manufacturing period is Day 21 to Day 30. This choice will be important if a relative value calculation on the privileged foreign status crude oil is required, because the law requires the value used for computing the relative value to be the average per unit value of each product for the manufacturing period. Relative value must be calculated if a source feedstock is separated into two or more products that are removed from the subzone refinery. If the average per unit value for each product differs between the manufacturing period from Day 1 to Day 30 and the manufacturing period from Day 21 to Day 30, the correct period must be used in the calculation.

In order to minimize duty liability, the refiner would try to attribute the production of the exported kerosene and the sale of the jet fuel to the US Air Force to the privileged foreign crude oils. For the same reason, the refiner would try to attribute the removed motor gasoline and the aviation gasoline for the commuter airline to the domestic crude oil.

Accordingly, the refiner chooses to attribute up to 5,000 pounds of the domestic status class III crude as the source of the 10,000 pounds of aviation gasoline removed from the subzone refinery for the commuter airline. Since no other aviation gasoline could have been produced from the crude oils that entered production on Day 1, the refiner must attribute the remainder to the crude oils that entered production on Day 21. Again, using the production standards from T.D. 66–16, the class I crude could produce aviation gasoline in an amount up to 10,000 pounds (50,000 × .20). Likewise, the class IV crude oil could produce aviation gasoline in an amount up to 8,500 pounds (50,000 × .17).

The refiner selects use of the class I crude as the source of the aviation gasoline. The refiner could attribute up to 27,300 pounds (35,000–5,000 × .91) of the domestic class III crude oil as the source of the motor gasoline. This would leave 2,700 pounds of domestic class III crude available for further production for other than aviation gasoline or motor gasoline. The remaining motor gasoline removed (also 2,700 pounds) must be attributed to a privileged foreign crude oil. The refiner selects the privileged foreign class II crude oil that entered production on Day 1 as the source for the remaining 2,700 pounds of motor gasoline.

This would leave 32,300 pounds of privileged foreign class II crude oil available for further production, of which no more than 27,400 pounds could be designated as the source of motor gasoline. The refiner attributes the jet fuel that is removed from the refinery subzone for the US Air Force for use in military aircraft to the privileged foreign class II crude oil. The refiner could attribute up to 20,995 pounds of jet fuel from that

class II crude oil (32,300 × .65). Designating that class II crude oil as the source of the 10,000 pounds of jet fuel leaves 22,300 pounds of privileged foreign class II crude oil available for further production, of which up to 10,995 pounds could be attributed as the source of the jet fuel. Because the motor gasoline and the jet fuel, under the foregoing attribution, would be considered to have been separated from the privileged foreign class II crude oil, a relative value calculation would be required.

The jet fuel is eligible for removal from the subzone free of duty by virtue of 19 U.S.C. 1309(a)(1)(A). The refiner could attribute the privileged foreign class II crude oil as being the source of 9,812 pounds of jet fuel (22,300 × .44). The refiner chooses to attribute the privileged foreign class III crude oil as the source of the jet fuel. The refiner could attribute to that class III crude oil up to 15,000 pounds of kerosene (30,000 × .50).

II. *Attribution on a FIFO basis:*

Day 1–5.

Transfer, within the Refinery Subzone, from one or more storage tanks into process 150 barrels of Privileged Foreign (PF) Class II crude oil, equivalent to 50,000 pounds.

Day 6.

Removal from the refinery subzone 119 barrels of residual oils to customs territory, equivalent to 40,000 pounds.

Since the operator uses the FIFO method of attribution, as the product is removed from the subzone, or consumed or lost within the subzone, attribution must be to the oldest feedstock available for attribution. Accordingly, the 40,000 pounds (119 barrels) of residual oils will be attributed to 40,000 pounds of the PF Class II crude oil from Day 1–5.

Day 10.

Transfer, within the refinery subzone, from one or more storage tanks 4 barrels of domestic motor gasoline blend stock, equivalent to 1,000 pounds to motor gasoline blending tank.

Day 6–15.

Transfer, within the refinery subzone, from one or more storage tanks into process 320 barrels of Domestic Class III crude oil, equivalent to 100,000 pounds.

Day 16.

Removal from the refinery subzone 14 barrels of asphalt to customs territory, equivalent to 5,000 pounds.

The 5,000 pounds of asphalt will be attributed to 5,000 pounds of PF Class II crude oil from Day 1–5.

Day 17.

Removal from the refinery subzone, 324 barrels of motor gasoline to customs territory, equivalent to 81,000 pounds.

The 81,000 pounds of motor gasoline will be attributed to 1,000 pounds of domestic motor gasoline blend stock from Day 10, to the remaining 5,000 pounds of PF Class II crude oil from Day 1–5 and 75,000 pounds of domestic Class III crude oil from Day 6–15.

Day 16–20.

Transfer, within the refinery subzone, from one or more storage tanks into process 169 barrels of Privileged Foreign (PF) Class III crude oil, equivalent to 50,000 pounds.

Day 22.

Removal from the refinery subzone, 214 barrels of jet fuel for exportation, equivalent to 60,000 pounds.

The 60,000 pounds of jet fuel will be attributed to the remaining 25,000 pounds of domestic Class III crude oil from Day 6–15 and 35,000 pounds of PF Class III crude oil from Day 16–20.

Day 21–25.

Transfer, within the refinery subzone from one or more storage tanks into process, 143 barrels of domestic Class I crude oil, equivalent to 50,000 pounds.

Day 30 (End of Manufacturing Period).

It is determined that during the manufacturing period just ended, that 34 barrels of fuel, equivalent to 10,000 pounds was consumed, and 5 barrels of oil, equivalent to 1,500 pounds was irrecoverably lost as provided in § 146.53(c)(1)(iv) of this part, in the refining production process within the refinery subzone.

The 10,000 pounds of fuel consumed will be attributed 10,000 pounds of PF Class III crude oil from Day 16–20. The 1,500 pounds of oil lost in the refining production process will be attributed to 1,500 pounds of PF Class III crude oil from Day 16–20. The remaining 3,500 pounds of PF Class III crude oil from Day 16–20 will be the first to be attributed during the next manufacturing period.

III. *Relative value calculation:*

Because privileged foreign feedstocks transferred into process during Day 1–5 and Day 16–20 have two or more products attributed to them, each feedstock will require a relative value calculation.

Relative value calculation for UIN Day 1–5, 50,000 pounds, equivalent to 150 barrels.

	A Lbs	B Bbls	C $/Bbl	D Product value	E Feedstock factor	F R.V. Bbl	G Dutiable Bbl
Residual oil	40,000	119	15.00	1,785	.9047	108	108
Asphalt	5,000	14	13.00	182	.7840	11	11
Motor gasoline ..	5,000	20	26.00	520	1.5682	31	31
Total	50,000	153		2,487		150	150

A = Pounds attributed.
B = Equivalent barrels.
C = Price of product.
D = B × C.
E = C/(Total of column D/attributed crude Bbls).
Residual oil feedstock factor = 15.00/(2,487/150) = .9047.
F = BxE.
G = Dutiable barrels.
Since all products attributed to the 50,000 pounds (150 BBLS) of PF Class II crude entered customs territory duty equals $7.88 (150× .0525).

Relative value calculation for UIN Day 16–20, 46,500 pounds equivalent to 157 barrels.

	Lbs	Bbls	$/Bbl	Product Value	R.V. Factor	R.V. Bbl	Dutiable Bbl
Jet fuel	35,000	125	27.00	3,375	1.1030	138	0
Fuel consumed	10,000	34	12.00	408	0.4902	17	0
Process loss	1,500	5	12.00	60	0.4902	2	0
Totals ...	46,500	164		3,843		157	0

Since jet fuel was exported, no duty is applicable. Fuel consumed for refinery process was consumed within the subzone premises and did not enter customs territory, thus no duty is applicable. Likewise, the process loss occurred entirely within the subzone. Therefore, no duty is applicable.

SAMUEL H. BANKS,
Acting Commissioner of Customs.

Approved: February 28, 1994.
JOHN P. SIMPSON,
Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, March 4, 1994 (59 FR 10342)]

United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

Chief Judge

Dominick L. DiCarlo

Judges

Gregory W. Carman
Jane A. Restani
Thomas J. Aquilino, Jr.
Nicholas Tsoucalas
R. Kenton Musgrave
Richard W. Goldberg

Senior Judges

James L. Watson

Herbert N. Maletz

Bernard Newman

Samuel M. Rosenstein

Clerk

Joseph E. Lombardi

Decisions of the United States Court of International Trade

(Slip Op. 94–30)

SANWA FOODS, INC., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 91–12–00927 (Slip Op. 93–169)

(Dated February 22, 1994)

ORDER

GOLDBERG, *Judge:* Upon reading defendant's motion for rehearing and plaintiff's response thereto; upon consideration of all other papers and proceedings and herein, and upon due deliberation, it is hereby

ORDERED that defendant's motion for rehearing is granted; it is further

ORDERED that this Court's judgment, entered on August 23, 1993 in conjunction with Slip Op. 93–169, is vacated and set aside; and it is further

ORDERED that the parties shall, within fifteen days of the date of this order, contact the court for the purpose of scheduling a status conference in this action.

(Slip Op. 94–31)

POLLAK IMPORT-EXPORT CORP., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 90–09–00484 and 90–09–00484–S

[Defendant's motion to amend parties' Stipulated Judgment on Agreed Statement of Facts, and to sever and dismiss certain entries is granted. Plaintiff's cross-motion to amend the summons in this action is denied. Judgment entered for defendant.]

(Dated February 22, 1994)

Fitch, King and Caffentzis (James Caffentzis), for plaintiff.

Frank W. Hunger, Assistant Attorney General; *Joseph I. Liebman,* Attorney-in-Charge, International Trade Field Office, Commercial Litigation Branch, Civil Division, United States Department of Justice *(Susan Burnett Mansfield),* for defendant.

MEMORANDUM OPINION

GOLDBERG, *Judge:* This matter comes before the court on defendant's motion, pursuant to USCIT Rules 59(e) and 60(a), (b), to amend the stipulated judgment previously entered in this action, and to sever and dismiss three entries for lack of subject matter jurisdiction. Plaintiff, Pollak Import-Export Corp. ("Pollak") cross moves, pursuant to USCIT Rules 3(d) and 7, to amend the summons that commenced this action by adding the entries in question. The court finds that the three entries in question were not included in the original summons and that, as a result, it does not presently have subject matter jurisdiction over those entries. The court therefore grants the government's motion; Pollak's cross-motion is denied.

BACKGROUND

Pollak, an importer of ladies' wool knit garments, challenged Customs' classification of certain merchandise as wool coats rather than wool jackets. *Pollak Import-Export v. United States,* Court No. 88–08–00649. Pollak was designated a test case. This court decided the test case in Pollak's favor on February 14, 1992. *Pollak,* 16 CIT ___, Slip Op. 92–12 (1992). The present case *(i.e.* Court No. 90–09–00484) and several others were suspended under that test case.

In light of the court's decision, the parties entered into stipulated judgments. The stipulated judgment settling Court No. 90–09–00484 et al.[1] was entered on September 16, 1993. Subsequently, the government discovered an inconsistency between the stipulated judgment and the original summons commencing this case. The stipulated judgment listed entry numbers 0008933, 0008966, 0009074, and 0009117 under protest number 1001–9–006528. The original summons commencing this action, however, only listed entry number 0008933 under the same protest number.

The issue presently before the court concerns the discrepancy between the entries listed on the original summons for Court No. 90–09–00484 and those listed on the stipulated judgment entered on September 16, 1993. The government claims that it was the understanding of both parties that the stipulated judgment would apply only to entries within the subject matter jurisdiction of the court. The government asserts that because entry numbers 0008966, 0009074, and 0009117 were not included in the summons, and no summons containing these entries was filed within 180 days of denial of the underlying protest as required by 28 U.S.C. § 2636(a) this court cannot exercise jurisdiction over these three entries.[2]

---

[1] Court Nos. 91–09–00706; 93–07–00385; and 92–10–00701 were also settled by this stipulated judgment.

[2] 28 U.S.C. § 2636(a) (1988) provides:

> A civil action contesting the denial, in whole or in part, of a protest under section 515 of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade
>
> (1) within one hundred and eighty days after the date of mailing of notice of denial of a protest under section 515(a) of such Act; or
>
> (2) within one hundred and eighty days after the date of denial of a protest by operation of law under the provisions of section 515(b) of such Act.

The government moves for an order to amend the stipulated judgment by removing these entries. In the same motion, the government requests that the court sever these entries from Court No. 90–09–00484, designate them as Court No. 90–09–00484–S, and dismiss Court No. 90–09–00484–S for lack of subject matter jurisdiction. Pollak cross-moves to amend the summons for Court No. 90–09–00484 pursuant to USCIT R. 3(d).[3] Pollak filed this motion November 1, 1993, more than three and one half years after its protests had been denied.

DISCUSSION

The court notes that "if the court lacks power to adjudicate * * * a cause of action in the first instance, it lacks power also to sanction a stipulation of settlement by entering a consent decree." *Walling v. Miller*, 138 F.2d 629 (8th Cir. 1943). Therefore, if the court does not have subject matter jurisdiction over the three entries in question, then the stipulated judgment is not binding as to those entries. The focal point for the court's analysis is whether it can find jurisdiction over these three entries in question, then the stipulated judgment is not binding as to those entries. The focal point for the court's analysis is whether it can find jurisdiction over these three entries either in the original summons or by allowing Pollak to amend the original summons.

Pollak initially argues that the entries are included within the scope of the original summons. It argues that, by listing the protest number in the summons, all entries associated with that protest number are implicated in the action. Alternatively, Pollak argues that if the entries are found not to be included within the scope of the original summons, the court should allow Pollak to retroactively amend the summons to include those entries under the listed protest number, so that the stipulated judgment will apply to them. Each of these arguments will be discussed in turn.

I. *The scope of the summons:*

28 U.S.C. § 2632(b)[4] states that an action contesting the denial of a protest, in whole or in part, is commenced in the court by filing a summons. Plaintiff must file a summons, *"with the content* and in the form, manner, and style prescribed by the rules of the court." 28 U.S.C. § 2632(b) (1988) (emphasis added). The form provided by U.S.C.I.T. Rules specifically indicated that the individual entries are to be enumerated. U.S.C.I.T. Rules, Appendix of Forms, Form 1. The court notes: "[t]his requirement is consistent with the underlying purpose of the summons, which is to put the government on notice as to which of its decisions are being judicially contested. * * * Consequently, notice will

[3] USCIT R. 3(d) provides: "The court may allow a summons to be amended at any time, in its discretion and upon such terms as it deems just, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the amendment is allowed."

[4] This section reads:

> A civil action in the Court of International Trade under section 515 or section 516 of the Tariff Act of 1930 shall be commenced by filing with the clerk of the court a summons, with the content and in the form, manner, and style prescribed by the rules of the court.

28 U.S.C. § 2632(b) (1988).

only be fully effective if the plaintiff specifically enumerates the entries being contested." *Bradley Time Div. Elgin Nat'l Time Watch Co. v. United States*, 9 CIT 613, 614 (1985).

Pollak argues that simply listing the protest number in the summons puts the government on notice of every possible claim under that protest number. Pollak argues that the basis of the court's jurisdiction is grounded upon the filing of a summons against the denial of a protest, and that the omission of an individual entry number covered by that protest is not an incurable jurisdictional defect.

The court rejected a similar argument in *Border Brokerage Co., Inc. v. United States*, 72 Cust. Ct. 93, 372 F. Supp. 1389 (1974). The court there noted that filing a protest does not create a unitary cause of action which automatically embraces all entries included therein."The grouping of entries within a single protest is a matter of convenience to the importer. * * * [T]he protest is merely an administrative vehicle in which * * * multiple yet distinct claims may be embodied." *Id.* at 94, 372 F. Supp. at 1390.

The *Border Brokerage* court treated each entry as a distinct claim which would have been listed in the summons. The court observed:

> "[A]n importer may decide for his own reasons not to pursue judicially a claim as to merchandise on a particular entry, even though he may have sought a reliquidation administratively. Clearly, therefore, a summons may be limited in content to fewer entries than were covered by the administrative protest, denial of which is being challenged." *Id.* at 96, 372 F. Supp. 1392.

The court finds *Bradley* and *Border Brokerage* dispositive. For the government to have been adequately notified of all claims brought against it, pollak had to list in the summons each entry under protest number 1001–9–006528 it wished to judicially contest. Each entry represents a potential claim against the government that Pollak could have pursued in this case. The government should not be forced to speculate whether certain entries were omitted intentionally or inadvertently. Unless the entries are listed in the summons, the government cannot have adequate notice as to these claims. Because the three entries in question were not listed in the summons, they are not included within the scope of the summons and the court does not presently have jurisdiction over the three entries.

II. *Amendment of the summons:*

Pollak asks this court to allow it to amend the summons it filed on September 19, 1990, pursuant to USCIT R. 3(d), to include entry number 0008966, 0009074, and 0009117. 28 U.S.C. § 2636(a) states that an action contesting denial of a protest is barred from this court unless it is commenced within 180 days of the denial. Protest number 1001–9–006528, which contains the three entries in question, was denied on march 23, 1990. The 180 day period Pollak was allotted under § 2636(a) expired on September 19, 1990. As the court noted, Pollak filed its motion to amend the summons more than three and one half

years after the protest was denied. Therefore, Pollak is time-barred from amending its summons.

Jurisdictional prerequisites are strictly construed. *See Mitel, Inc. v. United States,* 16 CIT ____, 782 F. Supp. 1567 (1992). Any argument over considerations of fairness is misplaced in this case. Section 2636(a) provides a hard and fast deadline which Pollak did not meet. The court's decision in this case is consistent with previous decisions. "A plaintiff cannot amend its summons to include entries completely omitted from the original summons once the 180 day filing period has passed." *Bradley,* 9 CIT at 615.

Finally, the court acknowledges that an amendment of a summons may be appropriate where entry numbers are listed, but the numbers are transposed. *See id.* In such cases, the entry numbers are identifiable despite any error in listing the entry numbers, and the government would have notice of each entry being judicially disputed. Pollak's error in this case, however, is not a mere typographical error. As a result, the court refuses to grant Pollak an amendment to its original summons in this case.

Conclusion

For the foregoing reasons, the court grants the government's motion to amend the stipulated judgment by removing entry numbers 0008966, 0009074, and 0009117. The court further grants the government's motion to sever these entry numbers from Court No. 90–09–000484–S shall be dismissed for lack of subject matter jurisdiction. Pollak's motion to amend is denied.

Index

Customs Bulletin and Decisions
Vol. 28, No. 11, March 16, 1994

U.S. Customs Service

Treasury Decisions

General Notices

Proposed Rulemaking

U.S. Court of International Trade

Slip Opinions

U.S. G.P.O. 1994–301–610–60088